

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Guenter ESCH et al.

Art Unit: 3746

Application No.: 09/582,307

Confirmation No.: 3612

Filed: June 22, 2000

Examiner: Charles G. Freay

For: VACUUM CLEANER FAN

RENEWED PETITION UNDER 37 C.F.R. § 1.137(B)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 23, 2008

Dear Sir:

This is a renewed petition for revival of the above-identified application. This application became abandoned for failure to file a timely reply to an Office Action dated May 24, 2001.

I. Period One: Delay in reply that originally resulted in the abandonment.

The abandonment of the above-identified application was the result of unintentional insufficient oversight over the prosecution of the above-identified application. During the time the reply necessary to avoid abandonment was due, the assignee of the rights to the above-identified application, Miele & Cie. KG, was experiencing considerable employee turnover in its patent department. This personnel turnover, and resulting confusion regarding management responsibilities, resulted in the insufficient oversight over the prosecution of the application in

the patent department. *See* Declaration of Uwe Bauch (hereinafter “the Bauch Declaration”), attached hereto as Exhibit A. This insufficient oversight allowed the inaction and lack of communication from Karl Hormann, the Applicants’ former representative and the attorney responsible for the prosecution of the above referenced application when the reply necessary to avoid abandonment was due, with respect to this application to go unnoticed. Accordingly, Applicants were unaware of the unintentional abandonment of the application.

Further, as described in Applicants’ Statement in Support of Petition for Revival of an Application filed April 15, 2008 (hereinafter “Petition I”), a letter was sent, via facsimile and certified mail, to Mr. Hormann on March 14, 2008 (attached as Exhibit B) requesting an explanation as to why the above reference application became abandoned. Mr. Hormann has still failed to respond to this request for information.

II. Period Two: Delay in filing an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application.

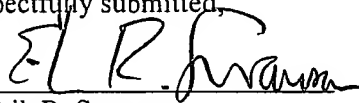
Applicants became aware that the application had become abandoned on or about January, 30, 2008. *See* Bauch Declaration, Exhibit A. Applicants had mistakenly stated in Petition I that Applicants had become aware of the abandonment prior to October 18, 2006. In fact, Applicants became aware of the abandonment on or about January 16, 2008, as set forth below. During October 2006, Mr. Hormann was the attorney of record. Although Applicants’ current representatives were retained in May 2006, and a power a “Change in Power of Attorney” was filed via facsimile at the Patent Office on October 24, 2006 (attached hereto as Exhibit C), this facsimile was apparently not received by the Patent Office, and the “Change in Power of Attorney” was electronically re-filed on December 19, 2007. *See* Electronic Acknowledgement

It is believed that no additional fees are required for this petition or the accompanying response. However, should additional fees be necessary in connection with the filing of this petition or the accompanying response, or if a petition for an additional extension of time is required for timely acceptance of the same, the Commissioner is hereby authorized and requested to charge Deposit Account No. 04-0100 for any such fees, and applicants hereby petition for any needed extension of time.

Dated: September 23, 2008

Respectfully submitted,

By



Erik R. Swanson

Registration No.: 40,833

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

(212) 527-7701 (Fax)

Attorney for Applicants

EXHIBIT A

Attorney Docket: 20794/0205568-US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Guenter ESCH et al.

Art Unit: 3746

Application No.: 09/582,307

Confirmation No.: 3612

Filed: June 22, 2000

Examiner: Charles G. Freay

For: VACUUM CLEANER FAN

DECLARATION IN SUPPORT OF PETITION TO REVIVE UNDER 37 C.F.R. 1.137(B)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Uwe Bauch, declare as follows:

1. I am an employee of MIELE & CIE. KG., the assignee of U.S. patent application No. 09/582,307 entitled "VACUUM CLEANER FAN" (hereafter "the '307 Application"). I am familiar with the '307 Application and the department I work in at MIELE & CIE. KG. is responsible for the prosecution of the '307 Application.

2. During the fall of 2001, my office was experiencing personnel turnover. The various personnel changes necessitated changes to the management responsibilities over various patents and patent applications. The confusion resulting from the personnel departures and changes to management responsibilities resulted in a failure to have oversight over the prosecution of the '307 Application.

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3. My office did not receive any communications from Karl Hormann, the attorney responsible for the prosecution of the '307 Application, regarding the May 24, 2001 Office Action issued in the examination of the '307 Application.

4. In May of 2006 our office elected to obtain new representation before the U.S. Patent Office.

5. Our current representatives before the U.S. Patent Office, DARBY & DARBY PC, filed a revocation and new power of attorney before the U.S. Patent Office in the '307 Application, which was accepted by the Patent Office on January 8, 2008.

6. On or about January of 2008 I became aware that the '307 Application had become abandoned.

7. We instructed our current representatives to proceed with preparing a response to the May 24, 2001 Office Action and to file a petition to revive the '307 Application.

8. On April 15, 2008 our current representatives filed a Petition to Revive the '307 Application, a response to the May 24, 2001 Office Action, and an Information Disclosure Statement.

Ra

Page - 3 -

4

22.09.2008

Date _____

PROFESSIONAL CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK
SEATTLE
WASHINGTON, D.C.
SAN JOSE
PALM BEACH GARDENS
FRANKFURT

ERIK R. SWANSON
PRINCIPAL
(0)69 713 7798-0
eswanson@darbylaw.com

Karl Hormann, Esq.
Law Offices of Karl Hormann
86 Sparks Street
Cambridge MA 02138-2216
USA

Re: Abandonment of U.S. Patent Application 09/582,307, filed June 22, 2000

The above-referenced application became abandoned on September 26, 2002.

As your office was responsible for prosecution of the application when the reply necessary to avoid abandonment was due, we are writing to ask you to provide a statement explaining why action was not timely taken to prevent the application from becoming abandoned. We ask that your statement explain why this application became abandoned while it was under your control and what efforts you made to reply to the outstanding office action. We ask that your statement include at least the following to the extent applicable:

- (1) evidence concerning the procedures in place that should have avoided the error resulting in the delay;
- (2) evidence concerning the training and experience of the person(s) responsible for the error; and

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DARBY &
DARBY


Karl Hormann, Esq.
March 14, 2008
Page 2

- (3) copies of any applicable docketing records to show that the error was in fact the cause of the delay.

We ask that you include copies of any correspondence relating to the filing (or failure to file) of a reply to the outstanding office action from you or other persons involved with this application at the time of the abandonment. To the extent there are other persons having first hand knowledge of the circumstances surrounding the lack of a reply to the outstanding office action, we ask that you provide statements from those persons.

Please do not hesitate to contact me if you have any questions about this matter. We ask that you provide your statement(s) within one month of the date of this letter, i.e., by April 13, 2008.

Sincerely yours,

A handwritten signature in black ink, appearing to read "E. R. Swanson".

Erik R. Swanson

ERS:mmo

cc: Miele & Cie. KG

HP Officejet 7310
Personal Printer/Fax/Copier/Scanner

Log for
Darby & Darby Frankfurt
+49 69 713 7798-29
Mar 14 2008 5:30PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Mar 14	5:29PM	Fax Sent	00016174918877	0:57	2	OK

*** TX REPORT ***

FILE

TRANSMISSION OK

TX/RX NO 0770
CONNECTION TEL 9157127383008920794
SUBADDRESS
CONNECTION ID
ST. TIME 10/24 22:37
USAGE T 00'42
PGS. SENT 4
RESULT OK

FAX TRANSMISSION

DATE: October 24, 2006

PTO IDENTIFIER: Application Number 09/582,307
Patent Number

Inventor: Guenter Esch et al.

MESSAGE TO: US Patent and Trademark Office

FAX NUMBER: (571) 273-8300

FROM: DARBY & DARBY P.C.

Erik R. Swanson

PHONE: (212) 527-7700

Attorney Dkt. #:

212/212/20656218501

PAGES (Including Cover Sheet): 4

CONTENTS:

Certificate of Transmission (1 page)
Power of Attorney to Prosecute Application Before the USPTO (1 page)
Statement Under 37 CFR 3.73(b) (1 page)

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DATE: October 24, 2006

PTO IDENTIFIER: Application Number 09/582,307
Patent Number

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DARBY & DARBY P.C.

P.O. Box 5257, New York, New York 10150-5257
Telephone: (212) 527-7700 Facsimile: (212) 527-7701

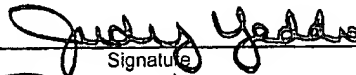
Application No. (if known): 09/582,307

Attorney Docket No.: 20794/0205568-USO

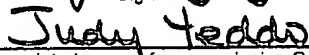
Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office.

on October 24, 2006
Date



Signature



Typed or printed name of person signing Certificate

Registration Number, if applicable

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Power of Attorney to Prosecute Application Before the USPTO (1 page)
Statement Under 37 CFR 3.73(b) (1 page)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Applicant/Patent Owner: Miele & Cie. KG

Application No./Patent No./Control No.: 09/582,307 Filed/Issue Date: June 22, 2000

Entitled: VACUUM CLEANER FAN

_____ , a _____
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest:
(The extent, by percentage) of its ownership interest is _____ %)

In the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel. 010913 Frame 0147 or a true copy of the original assignment is attached.

OR

- B. ☐ A chain-of-title from the inventor(s) of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

Additional documents in the chain of title are listed on a supplemental sheet.

As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11. [NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature _____ Date: 10/18/2006

Erik R. Swanson	(212) 527-7700
Printed or Typed Name	Telephone Number
Registration Number 40,833	
Title	

EXHIBIT D

Electronic Acknowledgement Receipt	
EFS ID:	2610923
Application Number:	09582307
International Application Number:	
Confirmation Number:	3612
Title of Invention:	VACUUM CLEANER FAN
First Named Inventor/Applicant Name:	GUENTER ESCH
Correspondence Address:	LAW OFFICES OF KARL HORMANN - 86 SPARKS STREET - CAMBRIDGE MA 02138-2216 US 6174918867 -
Filer:	Jay Philip Lessler
Filer Authorized By:	
Attorney Docket Number:	000393
Receipt Date:	19-DEC-2007
Filing Date:	22-JUN-2000
Time Stamp:	00:13:03
Application Type:	U.S. National Stage under 35 USC 371

Payment information:

Submitted with Payment	no
File Listing:	

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1		00888374.pdf	363106 807515cbd567f06ac34e84924e0d4e7513f97d7	yes	2
Multipart Description/PDF files in .zip description					
	Document Description		Start		End
	Power of Attorney		1		1
	Assignee showing of ownership per 37 CFR 3.73(b).		2		2
Warnings:					
Information:					
Total Files Size (in bytes):			363106		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><u>New Applications Under 35 U.S.C. 111</u> If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><u>National Stage of an International Application under 35 U.S.C. 371</u> If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><u>New International Application Filed with the USPTO as a Receiving Office</u> If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

EXHIBIT E

MIT CE

ERS/f



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
501, New York
Alexandria, Virginia 22313-1430
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/582,307	06/22/2000	GUENTER ESCH	000393

CONFIRMATION NO. 3612

POA ACCEPTANCE LETTER



0000000027595837

7278
DARBY & DARBY P.C.
P.O. BOX 770
Church Street Station
New York, NY 10008-0770

Date Mailed: 01/08/2008

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/19/2007.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/nschayden/

Office of Initial Patent Examination (571) 272-4000 or 1-800-PTO-9199

EXHIBIT F

From: Barrison, Flynn
Sent: Mittwoch, 16. Januar 2008 17:09
To: Swanson, Erik R
Cc: EX_Docketing
Subject: 20794/0205568-US0

Erik:

The PTO finally accepted our POA in this case. Unfortunately it is abandoned as of 2002. The Office Action is too old to be in the IFW as well.

09-26-2002 Mail Abandonment for Failure to Respond to Office Action
09-26-2002 Abandonment for Failure to Respond to Office Action
05-24-2001 Mail Non-Final Rejection
05-23-2001 Non-Final Rejection

The Examiner is FREAY, CHARLES G (571)272-4827

Flynn Barrison
Patent Services Manager
DARBY & DARBY P.C.
7 World Trade Center
250 Greenwich Street
New York, N Y 10007-0042
212.527.7700 | Main Number
212.527.7701 | Fax Number

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EXHIBIT G

Docket No.: 20794/0205568-US0
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Guenter ESCH et al.

Application No.: 09/582,307

Confirmation No.: 3612

Filed: June 22, 2000

Art Unit: 3746

For: VACUUM CLEANER FAN

Examiner: Charles G. Freay

AMENDMENT / RESPONSE TO FINAL OFFICE ACTION

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

April 15, 2008

Dear Sir:

INTRODUCTORY COMMENTS

In response to the Office Action dated May 24, 2001, please amend the above-identified application as follows:

Amendments to the Specification begin on page 2 of this paper.

Amendments to the Claims begin on page 3 of this paper.

Remarks begin on page 7 of this paper.

Amendments to the Specification

In the Specification please insert the following paragraph before the section entitled "BACKGROUND OF THE INVENTION":

CROSS REFERENCE TO RELATED APPLICATIONS

This is a U.S. national phase application under 35 U.S.C. § 371 of International Patent Application No. PCT/EP99/08099, filed October 27, 1999, and claims benefit of German Patent Application No. 198 50 236.2, filed October 31, 1998.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-26 (Canceled)

Claim 27 (New): A vacuum cleaner fan, comprising:

an electric drive motor including a support cage configured to receive structural modules of the motor, the structural modules including a stator pack, a rotor and brush holders having carbon brushes and contact pins; and

a blower unit having at least a single stage, the blower unit driven by the motor and including a deflector, an impeller and a suction hood, the deflector configured as a cover for the support cage and including a bearing seat configured to receive the rotor;

wherein the support cage is configured to receive the structural modules to extend in an axial direction of the blower and wherein the support cage is configured such that the contact pins of the brush holders directly contact stator contacts, the brush holders disposed in or on an area of an upper side of the support cage that faces the deflector.

Claim 28 (New): The vacuum cleaner fan recited in claim 27, wherein the support cage includes a rim that extends from the cage and faces the deflector, the rim including receptacles configured to receive the brush holders, the receptacles formed in the rim and open upwardly towards the interior of the support cage.

Claim 29 (New): The vacuum cleaner fan recited in claim 27, wherein the stator pack includes protruding stator pack connectors and the rim includes openings that extend into a wall of the support cage, the openings configured to receive the stator pack connectors.

Claim 37 (New): The vacuum cleaner fan recited in claim 36, wherein the adaptor housing includes further connector pins that extend freely into a socket opening in the support cage that is configured for an external plug-in connection.

Claim 38 (New): The vacuum cleaner fan recited in claim 34, wherein the adaptor housing is configured to be inserted positively into the receptacle.

Claim 39 (New): The vacuum cleaner fan recited in claim 33, wherein the electrical components include a decoupling capacitor and a thermal switch for the motor.

Claim 40 (New): The vacuum cleaner fan recited in claim 34, wherein the adaptor housing includes a hold down bracket configured to hold down the stator pack.

Claim 41 (New): The vacuum cleaner fan recited in claim 34, wherein the adaptor housing includes a lower housing portion configured to receive the circuit board and a lid portion linked to the lower housing portion.

Claim 42 (New): The vacuum cleaner fan recited in claim 41, wherein the lid portion is flexibly linked to the lower housing portion.

Claim 43 (New): The vacuum cleaner fan recited in claim 28, wherein the deflector is centrally affixed to the rim.

Claim 44 (New): The vacuum cleaner fan recited in claim 28, wherein the rim and the deflector include one or more positively interfitting centering guides that are respectively configured to mutually align the support cage and the deflector, the deflector including the one or more positively centering guides in a marginal portion at the lower side of the deflector.

REMARKS

In view of the foregoing amendments and the following remarks it is respectfully submitted that the present application is in condition for allowance.

I. Status of the Claims

Claims 1-26 have been cancelled herein without prejudice. New claims 27-53 have been added. New claims 27-53 are fully supported by originally filed claims 1-26 as well as the Specification. No new matter has been added.

II. Claim Objections and Rejections

The objections to claims 1, 4 and 25 and the rejections of claims 1-26 under 35 U.S.C. § 112 have been rendered moot as claims 1-26 have been cancelled herein. It is respectfully submitted that new claims 27-53 fully comply with 35 U.S.C. § 112. Withdrawal of the objections and rejections is respectfully requested.

III. Objection to the Specification

The Specification has been amended as suggested in the Office Action. Accordingly, withdrawal of the objection to the Specification is respectfully requested.

IV. Allowable Subject Matter

Applicants thank the Examiner for the indication of allowable subject matter in claims 1-26. New claims 27-53 includes features similar to features included in cancelled claims 1-26 and accordingly Applicants respectfully submit that claims 27-53 also contain allowable subject matter.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>		Complete if Known			
		Application Number	09/582,307-Conf. #3612		
		Filing Date	June 22, 2000		
		First Named Inventor	Guenter Esch		
		Art Unit	N/A		
		Examiner Name	Not Yet Assigned		
Sheet	1	of	1	Attorney Docket Number	20794/0205568-US0

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. ¹	Document Number Number-Kind Code ² (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
	AA*	US-5,477,588	12-26-1995	Iida et al.	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Foreign Patent Document Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T ⁶
	BA	DE-1563028	04-23-1970	Siemens Ag		<input checked="" type="checkbox"/>
	BB	DE-19606146	08-21-1997	Vorwerk Co Interholding		<input checked="" type="checkbox"/>
	BC	EP-0270935	06-15-1988	Shop Vac Corp		<input type="checkbox"/>

Examiner Signature		Date Considered	
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. * CITE NO.: Those application(s) which are marked with an single asterisk (*) next to the Cite No. are not supplied (under 37 CFR 1.98(a)(2)(ii)) because that application was filed after June 30, 2003 or is available in the IFW. ¹ Applicant's unique citation designation number (optional). ² See Kind Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²

Examiner Signature		Date Considered	
--------------------	--	-----------------	--

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached.

{W:\20794\0205568-us0\01501487.DOC (12/19/2003)12/19/2003 12/19/2003 }

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Guenter Esch et al.

Application No.: 09/582,307

Confirmation No.: 3612

Filed: June 22, 2000

Art Unit: N/A

For: VACUUM CLEANER FAN

Examiner: Not Yet Assigned

INFORMATION DISCLOSURE STATEMENT (IDS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Information Disclosure Statement is submitted in accordance with 37 C.F.R. 1.97, 1.98, and it is requested that the information set forth in this statement and in the listed documents be considered during the pendency of the above-identified application, and any other application relying on the filing date of the above-identified application or cross-referencing it as a related application.

1. This IDS should be considered, in accordance with 37 C.F.R. 1.97, as it is filed:
(Check one of the boxes A-D)

- ☐ A. within three months of the filing date of the above-identified national application or within three months of the entry into the national stage of the above identified national application
- ☐ B. before the mailing date of a first office action on the merits, or a first office action after filing a request for continued examination.
- ☒ C. after (A) and (B) above, but before final rejection or allowance, and Applicants have made the necessary statement in box "i" below or paid the necessary fee in box "ii" below.

(check one of the boxes "i" and "ii" below:)

☐ i. Counsel states that, upon information and belief, each item of information listed herein was (check one of boxes (a) or (b))

☐ (a) first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS; or

☐ (b) not cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of undersigned after making reasonable inquiry, was not known to any individual designated in 1.56(c) more than three months prior to the filing of this IDS.

☒ ii. Payment in the amount of the fee set forth in 1. 17(p), presently believed to be \$180, is enclosed.

☐ D. after (A), (B) and (C) above, but before payment of the issue fee: Applicant petitions under 37 C.F.R. 1.97(d) for the consideration of this IDS. Under 37 CFR 1.17(p) payment in the amount of \$180.00 is enclosed. Counsel certifies that, upon information and belief, each item of information listed herein was

(check one of the boxes "a" and "b" below:)

☐ (a) first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS; or

☐ (b) was not cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of undersigned after making reasonable inquiry, was not known to any individual designated in 1.56(c) more than three months prior to the filing of this IDS.

2. In accordance with 37 C.F.R. 1.98, this IDS includes a list (e.g., form PTO/SB/08) of all patents, publications, or other information submitted for consideration by the office, either incorporated into this IDS or as an attachment hereto. A copy of each document listed is attached, except as explained below.

(check boxes A, B and/or C and fill in blanks, if appropriate.)

- ☒ A. Pursuant to the Notice issued by the United States Patent and Trademark Office dated August 5, 2003 waiving the requirements of 37 C.F.R. § 1.98(a)(2)(ii), a copy/copies of the U.S. Patent(s) and/or U.S. Patent Application Publication(s) on PTO/SB/08 is/are not being submitted.
- ☐ B. Document(s) _____ is (are) deemed substantially cumulative to document(s) _____, and, in accordance with 1.98(c), only a copy of each of the latter documents is enclosed.
- ☐ C. Certain documents were previously cited by or submitted to the Office in the following prior applications, which are relied upon under 35 U.S.C. 120:

<<INSERT SERIAL NO. & FILING DATE>>

Applicant identifies these documents by attaching hereto copies of the forms PTO-892, PTO-1449 and/or PTO/SB/08 from the files of the prior application(s) or a fresh PTO/SB/08 listing these documents, and request that they be considered and made of record in accordance with 1.98(d). Per 37 CFR 1.98(d), copies of these documents need not be filed in this application.

- ☒ 3. Cite Nos. BA-BB are not in the English language. In accordance with 1.98(c), Applicant states:
- ☒ An English translation of each document (or of the pertinent portions thereof), or a copy of each corresponding English-language patent or application, or English-language abstract (or claim) is enclosed.
- ☐ The requirement for a concise explanation of the relevance of any foreign language document is satisfied by the attached search report; citation of the documents cited in the search report shall not be construed as an admission that they are or are considered to be, material to patentability of the subject matter claimed herein (See MPEP §609).
- ☐ A concise explanation of the relevance of document(s) _____ is set forth as follows: [Insert concise explanation of relevance]
- ☒ A concise explanation of the relevance of document(s) BA can be found on page 1 of the specification.
- ☐ A concise explanation of document(s) _____ can be found on the attached sheet.

- ☒ 4. No explanation of relevance is necessary for documents in the English language (see reply to Comments 67 in the preamble to the final rules; 1135 OG 13 at 20).
- ☐ 5. Other information being provided for the examiner's consideration follows:

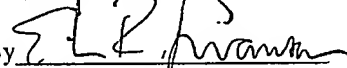
6. In accordance with 37 C.F.R. 1.97(g) and (h), the filing of this IDS should not be construed as a representation that a search has been made or that information cited is, or is considered to be, material to patentability as defined in §1.56 (b), or that any cited document listed or attached is (or constitutes) prior art. Unless otherwise indicated, the date of publication indicated for an item is taken from the face of the item and Applicant reserves the right to prove that the date of publication is in fact different.

Early and favorable consideration is earnestly solicited.

Payment in the amount of \$180.00 covering the fee set forth in 1.17(p) is enclosed. The Commissioner is authorized to charge any deficiency of up to \$300.00 or credit any excess in this fee to Deposit Account No. 04-0100.

Dated: April 15, 2008

Respectfully submitted,

By 

Erik R. Swanson

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